

1 MR. NAFTALIN: That will be fine.

2 MR. ARONOWITZ: Let's get it in so that nobody, in
3 haste, leaves anything out.

4 JUDGE STEINBERG: You did describe it?

5 MR. NAFTALIN: Interrogatories of Gerard A. Turro
6 to Serge Loginow, Jr. and the Mass Media Bureau.

7 JUDGE STEINBERG: Fourteen page, and the document
8 described will be marked for identification as Turro Exhibit
9 22.

10 (The document referred to was
11 marked for identification as
12 Turro Exhibit No. 22.)

13 MR. ARONOWITZ: No objection, Your Honor.

14 JUDGE STEINBERG: The document is received.

15 (The document referred to,
16 having been previously marked
17 for identification as Turro
18 Exhibit No. 22, was received
19 into evidence.)

20 MR. NAFTALIN: Your Honor, our next proposed
21 exhibit is Turro No. 23; Gerard A. Turro's Request to the
22 Mass Media Bureau for Admissions of Fact and Genuineness of
23 Documents.

24 JUDGE STEINBERG: Okay, it's 33 pages, and the
25 document described will be marked for identification as

1 Turro Exhibit 23.

2 (The document referred to was
3 marked for identification as
4 Turro Exhibit No. 23.)

5 MR. ARONOWITZ: No objection, Your Honor.

6 JUDGE STEINBERG: Turro Exhibit No. 23 is
7 received.

8 (The document referred to was
9 marked for identification as
10 Turro Exhibit No. 23, was
11 received into evidence.)

12 MR. NAFTALIN: Proposed Exhibit No. 24, Turro's
13 No. 24, Mass Media Bureau's Third Supplemental Answers to
14 Interrogatories of Gerard A. Turro; five pages.

15 JUDGE STEINBERG: The document described will be
16 marked for identification as Turro Exhibit 24.

17 (The document referred to was
18 marked for identification as
19 Turro Exhibit No. 24.)

20 MR. ARONOWITZ: No objection, Your Honor.

21 JUDGE STEINBERG: And Turro 24 is received.

22 //

23 //

24 //

25 //

1 (The document referred to,
2 having been previously marked
3 for identification as Turro
4 Exhibit No. 24, was received
5 into evidence.)

6 MR. ARONOWITZ: Is that 24 or 25?

7 JUDGE STEINBERG: Twenty-four.

8 MR. NAFTALIN: That was 24.

9 JUDGE STEINBERG: And I assume then the
10 handwriting at the top --

11 MR. NAFTALIN: Oh, sorry.

12 JUDGE STEINBERG: -- of page 1 of Turro 24 is
13 somebody in your office?

14 MR. NAFTALIN: That's actually me, Your Honor,
15 when I marked it for the black files.

16 JUDGE STEINBERG: Okay.

17 MR. NAFTALIN: Or pleading files.

18 JUDGE STEINBERG: That wasn't part of the exhibit
19 when filed, so everybody knows that anyway.

20 MR. NAFTALIN: Your Honor, I apologize. My
21 handwriting has always been terrible.

22 The next proposed exhibit is Turro No. 25, which
23 is Answers of Serge Loginow, Jr., and the Mass Media Bureau
24 to Interrogatories of Gerard A. Turro; and 18 pages.

25 JUDGE STEINBERG: The document described will be

1 marked for identification as Turro Exhibit 25.

2 (The document referred to was
3 marked for identification as
4 Turro Exhibit No. 25.)

5 MR. ARONOWITZ: No objection, Your Honor. I also
6 think that's a duplicate, so we will deal with that later.

7 MR. NAFTALIN: I think it is, too.

8 JUDGE STEINBERG: And the exhibit is received.

9 (The document referred to,
10 having been previously marked
11 for identification as Turro
12 Exhibit No. 25, was received
13 into evidence.)

14 MR. ARONOWITZ: In fact, I won't continue to say
15 that's a duplicate, but we will do our best to --

16 MR. NAFTALIN: Let's work it out, sure.

17 MR. ARONOWITZ: -- get that together.

18 MR. NAFTALIN: The next proposed exhibit, Your
19 Honor, is Turro 26, Response to Mass Media Bureau to Gerard
20 A. Turro's Request for Admissions of Fact and Genuineness of
21 Documents; 12 pages.

22 JUDGE STEINBERG: The document described will be
23 marked for identification as Turro Exhibit 26.

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Turro Exhibit No. 26.)

4 MR. ARONOWITZ: No objection, Your Honor.

5 JUDGE STEINBERG: Turro 26 is received.

6 (The document referred to,
7 having been previously marked
8 for identification as Turro
9 Exhibit No. 26, was received
10 in evidence.)

11 MR. NAFTALIN: Your Honor, our next proposed
12 exhibit is Turro No. 26, Supplemental Response of Mass Media
13 Bureau to Gerard A. Turro's Request for Admissions of Fact
14 and Genuineness of Documents.

15 JUDGE STEINBERG: The document described will be
16 marked for identification as Turro Exhibit 27.

17 (The document referred to was
18 marked for identification as
19 Turro Exhibit No. 27.)

20 MR. NAFTALIN: It's five pages, by the way, Your
21 Honor.

22 JUDGE STEINBERG: Okay. Mr. Aronowitz, any
23 objection?

24 MR. ARONOWITZ: To Turro --

25 JUDGE STEINBERG: Exhibit 27.

1 MR. ARONOWITZ: -- Exhibit 27?

2 No. No objection, Your Honor.

3 JUDGE STEINBERG: Exhibit 27 is received.

4 (The document referred to,
5 having been previously marked
6 for identification as Turro
7 Exhibit No. 27, was received
8 into evidence.)

9 MR. NAFTALIN: Your Honor, the next proposed
10 exhibit is Turro No. 28, which is the TC-8 Remote Control
11 System Instruction Manual from Burk Technology, Inc. It's
12 actually paginated, which includes some devilish fold-out
13 diagrams.

14 JUDGE STEINBERG: I was working on these all
15 weekends. I was trying to build one in my basement.

16 MR. NAFTALIN: Did it work?

17 JUDGE STEINBERG: Only No. 6.

18 (Laughter.)

19 MR. NAFTALIN: I count 52, Your Honor.

20 JUDGE STEINBERG: Okay, I got 56. Oh, I'm sure
21 you're right. There was a preface. You're right, Your
22 Honor.

23 JUDGE STEINBERG: The document described will be
24 marked for identification as Turro Exhibit 28.

25 //

1 (The document referred to was
2 marked for identification as
3 Turro Exhibit No. 28.)

4 MR. ARONOWITZ: Your Honor, I would like to ask a
5 question or two on this, and maybe this might be able to cut
6 this down a little bit.

7 Is it appropriate for me to ask what this is
8 offered for?

9 JUDGE STEINBERG: Sure. Oh, sure. If you didn't
10 ask, I was going to ask.

11 MR. NAFTALIN: Sure. And I'll say up front this
12 may be overkill, Your Honor. But the use of the remote
13 control equipment at Mr. Turro's Dumont studio has been
14 certainly a subject of lots of conversation, lots of
15 examination in the deposition phase of this case. Mr.
16 Loginow talks about use of the TC-8 remote control unit.
17 Mr. Gaghan has talked about it. Mr. Gaghan purports to have
18 sketched it in his statement. Other witnesses are dancing
19 around that subject as well.

20 And, Your Honor, this is it. This is everything
21 as far as we know of a technical nature that could possibly
22 be know about that remote control unit, and we thought we
23 were safer having it in the record for examination by
24 experts and anybody else than leaving it out.

25 MR. ARONOWITZ: I have a number of concerns, but

1 maybe we can work this out. I mean, first of all, it
2 suffers from the same thing, that we have no sponsor, and
3 there is nobody here to be really cross-examined on this.

4 But there has -- it is true there has been a lot
5 of discussion about the TC-8 remote control unit. It may be
6 possible for us to stipulate right here, right now, and I'm
7 doing this to some degree based on what I perceive to be
8 elements of your direct case or rebuttal case.

9 For example, there is a lot of testimony that the
10 TC-8 remote unit could switch amongst transmitter inputs and
11 outputs, but cannot raise or lower transmission levels.

12 MR. NAFTALIN: Transmitter power.

13 MR. ARONOWITZ: Transmitter power.

14 I think we can stipulate to that.

15 MR. NAFTALIN: Okay.

16 MR. ARONOWITZ: And in so stipulating would either
17 obviate the need for this exhibit or obviate the need for
18 somebody to come in to sponsor this exhibit.

19 JUDGE STEINBERG: Well, in terms of a sponsor,
20 this is different because I assume the sponsor is Mr. Turro,
21 and I assume that one of the things you're going to do when
22 you get Mr. Turro up on the stand, and if you're not going
23 to do it, I urge you to write it down and do it, is to show
24 him a copy of No. 28, and establish what it is. Namely,
25 it's whatever it is; and that, I think, is sufficient

1 sponsorship. This is different from the other equipment
2 stuff.

3 MR. ARONOWITZ: Absolutely.

4 JUDGE STEINBERG: And so I see a distinction
5 there. What I -- if you guys want to work out a
6 stipulation, that would be wonderful, but I don't know that
7 we have a whole lot of time today to do it because I want to
8 get finished with all the exhibits, and it's taking a lot
9 longer than I anticipated.

10 MR. ARONOWITZ: if the question is power levels,
11 if that is the question, and I'm not trying to load the
12 question, that's what I perceived from the rebuttal, I think
13 we could stipulate that it would switch among transmitters
14 but would not control power functions or power levels,
15 however you want to do it.

16 To me, hopefully, I am characterizing -- I'm not
17 mischaracterizing where we are at on this.

18 MR. NAFTALIN: That particular stipulation may
19 very well be helpful. I put this here -- I proposed this
20 exhibit out of pure protectiveness because I'm not
21 completely sure what other allegations or technical matters
22 may be raised about these remote control facilities. I am
23 more comfortable having this here for reference in the
24 record if it's necessary than not. There are other matters
25 beside -- witnesses such as Mr. Luna and Mr. Gaghan have

1 made all kinds of statements about what they could and
2 couldn't do and didn't do or think could happen or think
3 couldn't happen. And this is admissible, I believe, as a
4 technical manual. There are evidentiary matters to that
5 effects.

6 I would be more comfortable leaving it in there.
7 I hope we don't have to deal with it.

8 JUDGE STEINBERG: Okay, I will receive the
9 exhibit, but it's got to be properly introduced and you've
10 got to establish what it is, and it would be very useful if
11 the sponsors, who I assume is Mr. Turro, could point with
12 specificity to the page and the paragraph that supports what
13 he's talking about.

14 Now, to the extent he doesn't do that, Mr.
15 Aronowitz and Mr. Helmick have the option, and that is to
16 move to strike it. So Exhibit -- excuse me -- Turro Exhibit
17 28 is received.

18 (The document referred to,
19 having been previously marked
20 for identification as Turro
21 Exhibit No. 28, was received
22 into evidence.

23 MR. NAFTALIN: And as we said in our narrative
24 statement or initial introduction to the exhibits, Mr. Turro
25 is very interested in bringing a TC-8 unit here for everyone

1 recording equipment. I'm going to reject this because I
2 just don't think that it's -- I would rather the engineers
3 fight about it than me make a subjective opinion as to -- so
4 Exhibit 30 is rejected.

5 (The tapes referred to, having
6 been previously marked for
7 identification as Turro
8 Exhibit No. 30, was rejected.)

9 JUDGE STEINBERG: I also -- did any of you ever
10 listen to WNEW in New York?

11 MR. ARONOWITZ: AM or FM?

12 MR. RILEY: AM in the old days.

13 JUDGE STEINBERG: The old days.

14 MR. ARONOWITZ: The old FM>

15 JUDGE STEINBERG: Yes, there is like in his little
16 jingles or whatever, there is a subtle little reference to
17 the old WNEW tune. The same little melody is mixed in
18 with --

19 MR. RILEY: The old call sign.

20 JUDGE STEINBERG: Yes.

21 MR. RILEY: W-N-E-W.

22 JUDGE STEINBERG: Yes, it's in there subtly, which
23 I think is neat.

24 MR. RILEY: I wonder if they have the Shaeffer
25 Beer commercials. Those were the best commercials.

1 to see and touch as a demonstration. And to the extent that
2 this manual may help with that, here it is.

3 MR. ARONOWITZ: I mean, to the extent that that is
4 established as in place at the time.

5 MR. NAFTALIN: Oh, okay.

6 MR. ARONOWITZ: And by the way, I don't see any of
7 that in Mr. Hidle's --

8 MR. NAFTALIN: We understand our burden and we
9 will take care of that.

10 MR. NAFTALIN: The next proposed exhibit, Your
11 Honor, is Turro No. 29, which is a photograph of an antenna,
12 and it has been supported with a brief statement by Mr.
13 Turro.

14 JUDGE STEINBERG: Mr. Aronowitz? Well, let me
15 just say the statement that is contains consists of two
16 pages and is a photograph which I have stapled to the top of
17 it. So I guess technically it's a three-page exhibit.

18 MR. NAFTALIN: Okay.

19 JUDGE STEINBERG: Or two pages plus photo, plus
20 one photo, and that will be marked for identification as
21 Turro Exhibit 29.

22 (The document referred to was
23 marked for identification as
24 Turro Exhibit No. 29.)

25 MR. ARONOWITZ: Your Honor, there has been a lot

1 of -- Your Honor, we object to the admission of this
2 exhibit. There has been a lot of testimony from Mr. Turro
3 that things go up, things go down. Mr. Hurst has talked
4 about, as of some time in November, this being the third
5 generation of the Fort Lee translator. Until this is
6 properly proved, it should not be accepted.

7 JUDGE STEINBERG: Okay, I'm going to treat this as
8 I did the exhibits of -- was it Mr. Hurst?

9 MR. NAFTALIN: Mr. Hurst, No. 2, and Mr. Hidle,
10 No. 7?

11 JUDGE STEINBERG: Yes, and that somebody has got
12 to establish that this is what was there at the relevant
13 period of time. And with that condition, Exhibit 29 is
14 received.

15 (The document referred to,
16 having been previously marked
17 for identification as Turro
18 Exhibit No. 29, was received
19 into evidence.)

20 JUDGE STEINBERG: And if we go through the hearing
21 and that's not done, you know, even if there is not a motion
22 to strike, there is not going to be any weight given to
23 that.

24 MR. NAFTALIN: Okay. Your Honor, that brings us
25 to proposed Exhibit No. 30, Turro No. 30; two audio tapes

1 which are supported by another brief statement by Mr. Turro,
2 a two-page statement by Mr. Turro. One audio tape being
3 recordings, live off the air from the Fort Lee translator
4 while it was rebroadcasting a transmission. Tape 1,
5 rebroadcasting transmissions directly from the Monticello FM
6 station, 99.7 FM. And the second audio tape, again, a live
7 recording off the air from the Fort Lee translator. This
8 time while it was rebroadcasting the transmissions of the
9 Pomona translator at issue in this case. 94.3 FM.

10 JUDGE STEINBERG: Okay, the tapes described will
11 be marked for identification as Turro No. 30.

12 (The tapes referred to was
13 marked for identification as
14 Turro Exhibit No. 30.)

15 MR. ARONOWITZ: And these were -- Your Honor, we
16 object.

17 JUDGE STEINBERG: Well, let me ask what the
18 purpose of offering these is.

19 MR. NAFTALIN: The purpose is to show that the
20 Fort Lee translator is capable of receiving a signal
21 directly off the air from the Monticello station, and
22 rebroadcasting it with adequate quality, and receiving a
23 signal off the air from the Pomona translator and
24 rebroadcasting it with adequate quality, which are issues in
25 this case.

1 And actually, Your Honor, a problem that we have
2 had, a failure in, I think, everybody's recordkeeping, there
3 was a similar tape or tapes offered in July of 1995, as part
4 of Mr. Hurst's engineering statement at that time which
5 seems to have fallen out of the record somewhere, and I
6 would agree with Mr. Aronowitz that he would probably find
7 that tape even better than these tapes, but this is what
8 we've got, and they certainly go to issues in this case.
9 Bureau counsel will be free to cross-examine the witnesses
10 and ask if the station has been rebuilt with pure platinum
11 and gold since then or something, but we think it's
12 probative of the issue.

13 MR. ARONOWITZ: Same objection.

14 JUDGE STEINBERG: And what was that?

15 MR. ARONOWITZ: That there is nothing to indicate
16 that these tapes were made -- that the conditions under
17 which these tapes were made were the same as they existed in
18 '95.

19 JUDGE STEINBERG: Okay, I just don't think that
20 these prove anything. They were recorded in November '97,
21 after the search light was on, and I just don't think they
22 are probative. We don't know how they were recorded. We
23 don't know what equipment they were recorded on.

24 MR. NAFTALIN: He has a statement to that effect.

25 JUDGE STEINBERG: Yes, I know. Off-the-shelf

1 JUDGE STEINBERG: That was a great station.

2 MR. NAFTALIN: Your Honor, we included a video
3 tape here which was associated with Mr. Hurst's statement.
4 i would take it your ruling as to his statement would be --

5 JUDGE STEINBERG: Let's see what happens to his
6 statement.

7 MR. NAFTALIN: Okay.

8 JUDGE STEINBERG: And I am at a loss because I
9 told you I forgot the thing over the weekend. I was going
10 to take it home with me but I just forgot it. But I will
11 look at it before Mr. Hurst testifies.

12 MR. NAFTALIN: It's offered only as a visual aid
13 to everything else since we thought it would be more than
14 absurd to propose that we all go up there and see the
15 equipment and listen to the radio. We were trying to
16 provide --

17 MR. ARONOWITZ: Why would that be absurd?

18 MR. NAFTALIN: Do you want to do it? Go up
19 there? It's way to just bring it into the courtroom as best
20 we can.

21 JUDGE STEINBERG: Okay. Let me just review, the
22 witnesses that the Bureau has asked for were Mr. Hurst, Mr.
23 Hidle, am I -- did I ask you if you wanted them, but you
24 don't, don't you?

25 MR. ARONOWITZ: Well, Hidle, if in fact Hidle's

1 statement becomes admissible.

2 JUDGE STEINBERG: Well, it's been received.

3 MR. ARONOWITZ: All right, it's been admitted. To
4 the extent that they connect the dots, yes.

5 JUDGE STEINBERG: Well, then, he's got to be here
6 to connect the dots.

7 MR. ARONOWITZ: Okay.

8 MR. NAFTALIN: And I want to offer, and it's up to
9 you, Mr. Hurst has a dot that Mr. Hidle -- they were there
10 together. It says so in Mr. Hurst's statement. If you want
11 to save one witness, you might be able to get what you need
12 from him. That's just a suggestion.

13 JUDGE STEINBERG: Well, we have two statements.

14 MR. NAFTALIN: That's correct. That's right.

15 JUDGE STEINBERG: We can't have Mr. Hurst
16 testifying about Mr. Hidle's statement.

17 MR. NAFTALIN: No, we understand.

18 MR. ARONOWITZ: And if you want to take Mr. Hidle
19 out, I mean, then that's fine. Or if you want to put him
20 in, then we'll --

21 JUDGE STEINBERG: Okay.

22 MR. ARONOWITZ: Either one.

23 JUDGE STEINBERG: Okay.

24 MR. ARONOWITZ: I mean, if it is duplicative,
25 let's not bring him.

1 MR. NAFTALIN: Not entirely.

2 JUDGE STEINBERG: So we have got Hurst, Hidle,
3 Einreinhofer, Owen, Lynch and Garland.

4 MR. NAFTALIN: So it's essentially every witness
5 we proposed? You are not taking the opportunity to skip one
6 of them, are you?

7 MR. RILEY: Your Honor, Mr. Hidle wasn't included.
8 When we were talking about the possibility of having a
9 Tuesday engineering seminar here.

10 JUDGE STEINBERG: Right.

11 MR. RILEY: Hidle would go into that list, it
12 seems to me.

13 JUDGE STEINBERG: And so would Hurst.

14 MR. NAFTALIN: Yes.

15 MR. RILEY: Oh, and Hurst; that's true. Well, I
16 guess that Tuesday was the Bureau's case.

17 JUDGE STEINBERG: Right.

18 MR. RILEY: That wasn't -- you are absolutely
19 right. Yes, Hurst and Hidle would follow that. Yes. Yes.

20 JUDGE STEINBERG: So, but I mean, that's the
21 universe of people.

22 MR. RILEY: Yes.

23 JUDGE STEINBERG: Okay, let's take a short break
24 and then we will resume with Monticello Mountaintop's case.
25 We will take 10 minutes.

1 (Whereupon, a recess was taken.)

2 JUDGE STEINBERG: We're back on the record.

3 Let me just put on the record a citation to the
4 RKO case to which I referred. It's RKO General,
5 Incorporated 35 FCC 2nd. 100, and it's a 1972 case, and I
6 was referring to something which appears at page 103. And
7 it says it's a probative value of programming evidence --
8 probative value of programming evidence of programming after
9 a competing application is filed is small. And I would
10 think my ruling was that probative evidence of any -- the
11 probative value of any evidence of, I guess, the quality of
12 the signal after Turro received notice that the complaint
13 was filed would be small too.

14 So, I mean, that's -- or whatever I said back then
15 if I can remember what I said.

16 JUDGE STEINBERG: Okay, let's turn the floor over
17 to Mr. Riley.

18 MR. RILEY: Your Honor, I have given the reporter
19 two sets of MMBI exhibits. I would like to offer as
20 Monticello Mountaintop Broadcasting, Inc., MMBI, Exhibit 1
21 the 16-page exhibit headed "Declaration of Wesley R. Weis."

22 JUDGE STEINBERG: The document described will be
23 marked for identification as MMBI Exhibit 1.

24 //

25 //

1 (The document referred to was
2 marked for identification as
3 Monticello Mountaintop
4 Broadcasting, Inc. Exhibit No.
5 1.)

6 JUDGE STEINBERG: Any objections?

7 MR. ARONOWITZ: Yes, Your Honor.

8 JUDGE STEINBERG: Could I just ask Mr. Riley on
9 page 3?

10 MR. RILEY: Yes, Your Honor.

11 JUDGE STEINBERG: I know who Mr. Spicka is.

12 MR. RILEY: Yes, sir.

13 JUDGE STEINBERG: Who is Mr. Kirschner?

14 MR. RILEY: He is the present chief operator of
15 WJUX. He's an employee of MMBI.

16 JUDGE STEINBERG: Okay.

17 MR. RILEY: He was engaged in mid-1995, which I
18 think is stated somewhere in Mr. --

19 JUDGE STEINBERG: Okay.

20 MR. RILEY: But he is an engineer who is not a
21 full-time employee of MMBI, but is its chief operator.

22 JUDGE STEINBERG: Thank you.

23 Now it's Mr. Aronowitz's floor.

24 MR. ARONOWITZ: Your Honor, on page 2 in MMBI
25 Exhibit 1, the first full sentence, "This appeared on my

1 analysis to be a good business opportunity that had been
2 specifically approved in advance by the Chief of the Mass
3 Media Bureau," I have an objection to the words
4 "specifically approved." That's not what the letter said at
5 all.

6 JUDGE STEINBERG: Okay. Okay, Mr. Riley?

7 MR. RILEY: Yes, Your Honor. This is clear what
8 Mr. Weis believed Mr. Stewart's letter had done. The
9 preceding sentence says that it was within the terms of what
10 was being -- "What was being considered or proposed was
11 within the terms of what was authorized in Mr. Stewart's '91
12 letter as I understood that letter."

13 The ensuing sentence says, "It appeared on his
14 analysis to be a good business opportunity that had been
15 specifically approved."

16 He is clearly within those two sentences stating
17 that this was his judgment, and I think that's abundantly
18 clear from what he said and the context within which he says
19 it. I think he's entitled to say it. I think if I asked
20 him the question on the witness stand, "Could you explain to
21 us what your considerations were when Mr. Turro proposed
22 this to you," that question is not one to which an objection
23 could be laid. And I don't think if he gave this answer you
24 would rule that it's a strikeable answer.

25 JUDGE STEINBERG: I might elicit cross-examination

1 as to why did you think it was specifically approved.

2 MR. RILEY: Exactly.

3 JUDGE STEINBERG: Okay, objection is overruled.

4 MR. ARONOWITZ: Okay. One moment, Your Honor.

5 (Pause.)

6 MR. ARONOWITZ: Your Honor, on page 4, the first
7 full paragraph, the last sentence of the first full
8 paragraph that said, "The letter did not in any way convey
9 to me that Mr. Stewart, having received the correspondence
10 with Mr. Goldstein in the field inspector's report found
11 anything to criticize concerning the operations of JUX under
12 the rules pertinent to radio broadcasting stations."

13 My objection is that this assumes that Mr. Stewart
14 had the correspondence -- excuse me -- had the field
15 inspector's report, and that's just not in evidence.

16 MR. RILEY: It certainly assumes that, Your Honor.
17 I would not think that Mr. Weis could reasonably have
18 expected that Mr. Stewart wouldn't have been aware of the
19 Commission's investigatory activities a year after they took
20 place. It does assume that, but I think that if that is Mr.
21 Aronowitz's objection, then it would be fair for him to ask
22 Mr. Weis, "Is this an assumption on your part or do you know
23 for a fact that Mr. Stewart had seen the field inspector's
24 report?"

25 It's clear to me that Mr. Weis has assumed that he

1 did. It was a year after that report that he is writing
2 this letter.

3 JUDGE STEINBERG: Okay, I agree with Mr. Riley. I
4 will leave the sentence in there. And you, of course, can
5 cross-examine on it if you wish.

6 MR. ARONOWITZ: Your Honor, next, on page 8 the
7 carryover paragraph.

8 JUDGE STEINBERG: At the top or the bottom?

9 MR. ARONOWITZ: Top carryover from 7 onto 8.

10 JUDGE STEINBERG: Okay.

11 MR. ARONOWITZ: Eight lines down it says, "MMBI
12 has recently built an enhanced studio."

13 JUDGE STEINBERG: Right.

14 MR. ARONOWITZ: Right to the end of the sentence.
15 My objection would be that that is just not relevant, what
16 they are doing now versus what they did at the time.

17 JUDGE STEINBERG: Mr. Riley?

18 MR. RILEY: Your Honor, it depends, I think, on --
19 now, of course, the Bureau -- pardon me. The Commission
20 adopted the HDO, so it's a Commission show cause order, not
21 one from the Mass Media Bureau. It is Mr. Mr. Aronowitz's
22 position that the Commission has limited the period of time
23 in which it asks the question "Did MMBI have whatever is
24 required of it at its location," and that that period of
25 time precedes the period that this sentence is speaking of,

1 and "recently" truly does mean "recently," by the way. This
2 is 1997, then I think his objection probably is well taken,
3 and this discussion was had earlier about some of Mr.
4 Turro's exhibits.

5 I don't that it's -- I understand your comment
6 about the RKO case, but I don't think it's clear from the
7 HDO that it ceased -- that the HDO said, "After a ceratin
8 date we're not interested in whether a violation was
9 continuing or not," or to put it another way, "That after a
10 date certain we agree that WJUX had all appropriate
11 facilities."

12 But if Mr. Aronowitz says that's not now an issue,
13 fine. It is not, by the way, and in the whole context I
14 thin this is true, that this is not a sentence representing
15 that until this was done the station wasn't in compliance.
16 It's just a statement of what was done. I have no strong
17 feeling about it.

18 MR. ARONOWITZ: And I view it as you characertized
19 before. Once the spot light went on, you know, remedial
20 efforts --

21 MR. RILEY: Well, that's different.

22 MR. ARONOWITZ: If any.

23 MR. RILEY: That's different. I think, Judge
24 Steinberg, the reference to RKO is not quite the same as
25 saying that if there was a charge of a running continuing

1 violation, that an applicant is not entitled to show that at
2 least at a certain time the violation ended. There is no
3 concession in this sentence that there ever was a violation,
4 though. If Mr. Aronowitz is not saying that today the
5 Bureau has evidence that -- let us say as of mid-97 -- WJUX
6 had inadequate facilities, and he's not making that claim,
7 then this stands for nothing.

8 JUDGE STEINBERG: Well, here is what I'm going to
9 do. I'm going to leave in the first part of the sentence
10 about the recently built enhanced studio, but take out the
11 part beginning "and it is my plan to begin transmitting"
12 through the end of the paragraph because I draw a
13 distinction between something that's already happened in
14 some -- anybody can promise anything.

15 MR. RILEY: All right.

16 JUDGE STEINBERG: So I have sort of half sustained
17 you.

18 MR. ARONOWITZ: So that what is in is now, "MMBI
19 has recently built an enhanced studio for operation of JUX
20 within the same building it has been occupying"?

21 JUDGE STEINBERG: Correct.

22 MR. ARONOWITZ: Okay. Okay, on page 10, the very
23 last line the sentence that begins, "Copies of several
24 letters stating support for JUX(FM) and its programming."

25 JUDGE STEINBERG: Right.